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Attorneys for Defendant
DISCORD INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DAVID A. STEBBINS,
Plaintiff,
v.
KARL POLANO, et al.,
Defendants.

Case No.: 21-cv-04184-JSW

The Honorable Jeffrey S. White

**OPPOSITION TO MOTION FOR
RECUSAL**

1 Defendant Discord Inc. (“Discord”) respectfully submits this memorandum in opposition
 2 to the motion of Plaintiff David A. Stebbins (“Plaintiff”) seeking the Court’s recusal. ECF 56.

3 A judge “shall disqualify himself in any proceeding in which his impartiality might
 4 reasonably be questioned.” 28 U.S.C. § 455(a). The statute requires recusal when “a reasonable
 5 person with knowledge of all the facts would conclude that the judge’s impartiality might
 6 reasonably be questioned.” *Yagman v. Republic Ins.*, 987 F.2d 622, 626 (9th Cir. 1993); *Ali v.*
 7 *ServiceNow, Inc.*, No. 19-CV-03744-JSW, 2019 WL 11542365, at *1 (N.D. Cal. Sept. 23, 2019)
 8 (White, J.), *aff’d*, 797 F. App’x 322 (9th Cir. 2020). The standard contemplates is a “well-
 9 informed, thoughtful observer” rather than someone who is “hypersensitive or unduly
 10 suspicious.” *United States v. Holland*, 519 F.3d 909, 913 (9th Cir. 2008) (internal quotations
 11 omitted). Further, a duty to recuse can only arise “from an extrajudicial source and not from
 12 conduct or rulings made during the course of the proceeding.” *Toth v. Trans World Airlines,*
 13 *Inc.*, 862 F.2d 1381, 1388 (9th Cir. 1988); *Ali*, 2019 WL 11542365, at *1.

14 Plaintiff contends that the Court should recuse itself because defendant Karl Polano
 15 (“Polano”) expressed an intention to submit evidence to the Court *ex parte* using a link for a
 16 zoom conference call that Plaintiff infers the Court provided to Polano. *See* ECF 56, ¶¶ 6-12.
 17 Even if Plaintiff’s speculative interpretation of his adversary’s ambiguous comments were
 18 correct, it would not lead a well-informed reasonable observer to infer any judicial misconduct.
 19 *See Holland*, 519 F.3d at 913 (“the merest unsubstantiated suggestion of personal bias or
 20 prejudice” does not suffice to require recusal). The Court should therefore deny the motion. *See*,
 21 *e.g.*, *Clemens v. U.S. Dist. Ct. for Cent. Dist. of California*, 428 F.3d 1175, 1179 (9th Cir. 2005)
 22 (“a judge has as strong a duty to sit when there is no legitimate reason to recuse as he does to
 23 recuse when the law and facts require”) (internal quotation omitted).

24 For the reasons set forth above, Discord Inc. respectfully requests that the Court deny
 25 Plaintiff’s motion for recusal.¹

26
 27 ¹ In the same motion in which he seeks the Court’s recusal, Plaintiff also moves for sanctions
 28 against defendant Polano. ECF 56. Discord takes no position on that portion of the motion.
 Discord likewise takes no position on Plaintiff’s separate motion for preliminary injunctive
 relief against all of the individual defendants. ECF 57.

1 DATED: September 30, 2021

ZWILLGEN LAW LLP

2 By: /s/ Anna Hsia

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4 Attorneys for Defendant Discord Inc.

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